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FEDERAL COMMUNICATIONS COMMISSION MAY 21 1996
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Amendment to the Commission's)
Regulatory Policies Governing)
Domestic Fixed-Satellites and)
Separate International Satellite)
Systems)

IB Docket No. 95-41

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OPPOSITION OF AT&T CORP.

Pursuant to the Commission's Public Notice, Report No. 2129, released May 1, 1996, and Section 1.429(e) of the Commission's Rules, 47 C.F.R. § 1.429(e), AT&T Corp. ("AT&T") hereby opposes COMSAT's petition for partial reconsideration and immediate interim relief of the Commission's Report and Order,¹ FCC 95-14, released January 22, 1996, in this docket ("DISCO I Order" or "Order").² As shown herein, the Commission should not allow COMSAT to provide U.S. domestic satellite services on a primary basis, even for an interim period.

¹ The Commission's Public Notice was published in the Federal Register on May 6, 1996 (61 Fed. Reg. 20251).

² 11 FCC Rcd. 2429 (1996). The DISCO I proceeding was commenced by a Notice of Proposed Rulemaking in this docket, 10 FCC Rcd. 7789 (1995) ("Notice").

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INTRODUCTION

In the DISCO I Order (¶ 33), the Commission adopted its proposal to amend its rules so as to treat both U.S.-licensed domestic and U.S.-licensed separate geostationary fixed-satellites under a single regulatory scheme and thereby permit all such satellites to provide domestic and international services on a co-primary basis. This action allows domestic satellites, such as AT&T's TELSTAR satellites, to provide international services without the need to obtain Transborder Authorization, which generally applied where the international service would be "incidental" to the domestic services already provided. At the same time, it permits U.S.-licensed separate international satellite systems, such as Columbia, Orion and PanAmSat, to provide U.S. domestic services without a showing that such services are "ancillary," i.e., reasonably related to the use of their facilities for international communications.³

³ Under the Commission's new policy, all U.S.-licensed satellites providing international services are still required to obtain the approval of the relevant foreign country and would have to be coordinated through the International Telecommunication Union ("ITU") with other administrations whose satellite systems may be affected. In addition, consultation with INTELSAT under Article XIV(d) of the INTELSAT Agreement would continue to be required to ensure technical compatibility and to prevent significant economic harm to the INTELSAT global system.

In the DISCO I Order, however, the Commission deferred consideration of COMSAT's entry into the U.S. domestic market on a primary basis, until it addresses issues regarding non-U.S. satellite entry into the U.S. domestic market in a subsequent DISCO II proceeding.⁴ Thus, COMSAT is not permitted, without separate permission from the Commission on a case-by-case basis, to provide U.S. domestic services using INTELSAT or INMARSAT capacity. COMSAT challenges this aspect of the DISCO I Order.

ARGUMENT

COMSAT SHOULD NOT BE PERMITTED TO PROVIDE U.S. DOMESTIC SERVICE USING INTELSAT OR INMARSAT CAPACITY, UNTIL THESE ORGANIZATIONS HAVE BEEN SUBSTANTIALLY RESTRUCTURED.

AT&T, like all other commenters, supported the Commission's proposal to eliminate the current regulatory distinctions between U.S.-licensed domestic and U.S.-licensed separate international systems, and to authorize all such geostationary fixed-satellites to provide domestic and international services on a co-primary basis, because it would serve the public interest.⁵ As the

⁴ See Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, etc., IB Docket No. 96-111; CC Docket 93-23, RM-7931; File No. ISP-92-007, Notice of Proposed Rulemaking, FCC 96-210, released May 14, 1996, initiating the DISCO II rulemaking.

⁵ Order, ¶ 10.

Commission has recognized, there is a rapidly growing "trend towards a globalized economy. Corporations are becoming increasingly multinational in character, including most of the major U.S. corporations."⁶ These multinational corporations, which are the primary consumers of satellite services, want the convenience of "one-stop shopping" to meet their domestic and international communications needs.⁷ Permitting all U.S.-licensed, fixed-satellite operators to provide both domestic and international services will enable them to best meet customer needs, by increasing service options, lowering prices, and facilitating the creation of a global information infrastructure."⁸

By contrast, AT&T and virtually all other commenters opposed allowing COMSAT, a U.S. licensee and a worldwide provider, to participate in the U.S. market using INTELSAT and INMARSAT capacity to any greater extent than it already does, until substantial structural reform of these organizations takes place. At present, both INTELSAT and INMARSAT are treaty organizations that enjoy a broad range of governmental privileges and immunities (such as freedom from taxation, legal process, and the antitrust laws). In

⁶ Notice, ¶ 16.

⁷ Notice, ¶ 16; Market Entry and Regulation of Foreign-affiliated Entities, Notice of Proposed Rulemaking, 10 FCC Rcd. 4844, ¶ 20 (1995) ("Foreign Entry NPRM").

⁸ Notice, ¶ 21.

addition, both INTELSAT and INMARSAT perform "consultation/notification" functions, through which they can deny permission for other satellite operators to compete with them in their primary international operations. Moreover, COMSAT is the only channel through which U.S. carriers can obtain access to INTELSAT and INMARSAT space segments, thus further reinforcing the substantial monopolies enjoyed by these entities in international satellite communications.

The Commission itself has recognized the impediment posed by these organizations to a worldwide competitive satellite market, and it has therefore recommended: "(1) privatizing INTELSAT and INMARSAT and eliminating the privileges, immunities and special access to spectrum and orbital slots currently enjoyed by those organizations; and (2) eliminating COMSAT's current exclusive status as the sole U.S. investor in, and provider of, INTELSAT and INMARSAT services. . . ." ⁹ Unless and until these reforms are accomplished, neither COMSAT/INTELSAT nor COMSAT/INMARSAT should be permitted to

⁹ See M. B. Richards, Report of Special Counsel to the Commission on Reinventing Government, Creating a Federal Communications Commission for the Information Age, February 1, 1995, Summary of Bureau and Office Recommendations for 1995 Legislative Proposals, Appendix A, p. 2, Item 10. See also "U.S. Satellite Industry Joins Forces on INTELSAT/INMARSAT Privatization," Communications Daily, April 28, 1995, pp. 1-2.

enter the U.S. domestic market on a primary basis, because their participation in that market would be detrimental to fair competition. In these circumstances, the Commission properly declined to grant COMSAT's request to participate on a primary basis in the U.S. domestic market and correctly deferred consideration of this issue until it considered analogous issues of non-U.S. satellite entry.

COMSAT has made no showing that would warrant a different result, even for an interim period. COMSAT contends that its exclusion from the domestic market is discriminatory and handicaps its ability to compete fairly vis-à-vis, for example, AMSC and the former separate international systems, such as PanAmSat, Orion and Columbia. However, COMSAT offers no factual support for its conclusory assertions, which remain wholly unsubstantiated. Nor has it rebutted the significant concerns expressed by other commenters as to the potentially anticompetitive effects of COMSAT's participation in the U.S. domestic market.¹⁰

Moreover, the Commission correctly recognized that COMSAT's entry into the U.S. market was related to and should be addressed as part of its broader inquiry into "whether, and under what conditions, non-U.S. satellites

¹⁰ Comments filed June 8, 1995, IB Docket 95-41, by Columbia at iii; AT&T at 13-15; GE Americom at iii; Loral at 2, 10; Orion at 2, 4; PanAmSat at 8.

should be permitted to serve the U.S. domestic market"¹¹ -- an issue which will be addressed in the DISCO II proceeding. As the Commission has concluded in another proceeding, "unrestricted foreign carrier . . . entry is not in the public interest when U.S. carriers do not have effective opportunities to compete in the provision of services and facilities in the foreign carrier's primary markets."¹² Although COMSAT is a U.S.-licensed entity, issues similar to those related to non-U.S. satellite entry are relevant to its participation in the U.S. domestic market. For example, INTELSAT and INMARSAT enjoy special status in foreign countries, as well as privileges and immunities in the United States, all of which could confer on COMSAT an unfair competitive advantage over private U.S. satellite systems.

For these reasons, there is no basis for granting COMSAT "interim relief" to provide U. S. domestic service on a primary basis pending completion of the DISCO II rulemaking. COMSAT, of course, remains free to apply for incidental domestic authority on a case-by-case basis until the Commission completes that proceeding.

¹¹ Notice, ¶ 39.

¹² Foreign Entry NPRM, ¶ 1. See Market Entry and Regulation of Foreign-affiliated Entities, Report and Order, 11 FCC Rcd. 3873 (1995).

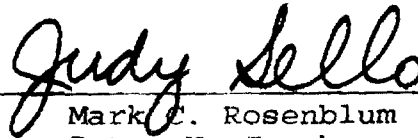
CONCLUSION

For the reasons stated herein, the Commission should deny COMSAT's petition for partial reconsideration and immediate interim relief and reaffirm that it will not at this time permit COMSAT to provide U.S. domestic service on a primary basis using INTELSAT or INMARSAT capacity.

Respectfully submitted,

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May 21, 1996

CERTIFICATE OF SERVICE

I, Diane Danyo, do hereby certify that on this 21st day of May, 1996, a copy of the foregoing "Opposition of AT&T Corp." was mailed by U.S. first class mail, postage prepaid, to the parties on the attached Service List.



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